

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

McROBERT MOTOR CO. d/b/a
GRESHAM FORD¹

Employer

and

Case 36-RC-6082

INTERNATIONAL ASSOCIATION OF
MACHINISTS & AEROSPACE
WORKERS, DISTRICT LODGE 24,
AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record² in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time automobile technicians, including pre-delivery person and asset students, employed by the Employer at its Portland, Oregon, facility; but excluding all office clerical employees, service advisors, body shop employees, parts employees, lube employees, auto sales employees, professional employees, managerial employees, guards and supervisors as defined by the Act, and all other employees.

The Employer is engaged in sales and service of new and used automobiles in Gresham, Oregon. Petitioner seeks a unit of all full-time and regular part-time automobile technicians (auto techs, herein).

¹ The name of the Employer appears as corrected at hearing.

² The parties filed briefs, which have been considered.

The Employer contends that the appropriate unit must include service advisors and exclude "asset students" (also called student techs), while Petitioner would include asset students and exclude service advisors. The parties agree that the pre-delivery person, Dennis Gould, performs mechanical repair work and should be included in any unit. Further, the parties agree that body shop employees, parts department employees, and lube employees are excluded from any unit.

The Employer's service department is under the supervision of service manager Jeffrey Ehm. There are 12 auto techs, in addition to Gould, and three service advisors. The auto techs and service advisors are divided into three teams, each consisting of one service advisor and four auto techs. There are two asset students, who work alongside one or another auto tech.

Auto techs perform repairs on vehicles, working in bays in the service department area of the Employer's facility. Each auto tech owns an extensive set of tools. The record does not reveal the average value of the auto techs' tools, but I note that they are eligible for Employer-paid insurance on their tools, with a \$2500 deductible, which at least implies that the average auto tech's tools are worth a great deal more. To be hired, they must have prior auto mechanic work experience and a good work history, or have completed the asset student program, a two-year associate degree program through Mt. Hood Community College which includes academic study and at least three months' full-time hands-on work in the Employer's service department. The record does not reveal the work history of any of the auto techs except one, who completed the asset student program.

Auto techs receive specialized training through the Ford Motor Company in specific areas of vehicle repairs such as electronics, manual transmissions, differentials and drivelines, automatic transmissions, electrical, steering and suspension, brakes, brake noise and vibration, climate control, fuel and air inlet theory and diagnostics, ignition systems, and exhaust emissions. Auto techs tend to specialize in certain areas, such as driveability (relating to engine lights, odd noises, rough running engines, missing and pinging symptoms), electrical and air conditioning, heavy line work, and front end work. Ideally, each team has one specialist in each category. There is one automatic transmission specialist and one Diesel specialist shared by the three teams.

Auto techs are paid by the flat-rate hour, that is, according to the Mitchell flat-rate manual, which lists how long it "should" take to perform each job. They receive \$17.50 per flat-rate hour, regardless of the actual time spent doing the job. Thus, if the job is rated at 2.0 hours, they are paid \$35.00 to complete the job, regardless of whether it happens to take them 1.5 hours or 2.5 hours. An auto tech who exceeds 100 flat-rate hours in two weeks gets a 50-cent per hour bonus. Auto techs earn about \$40,000 to \$60,000 a year, and a few earn as high as \$80,000. Asset students receive \$8.00 to \$10.00 per hour and are not eligible for bonuses. Auto techs and asset students wear uniforms consisting of pants and a shirt with a name patch and Ford logo, or overalls. Auto techs pay a portion of the costs of laundering their uniforms or overalls.

Service advisors work in an area of the service department off to the side of the repair bays. They greet in-coming customers, prepare repair orders, and assign the repair orders to individual auto techs on their respective teams. Service advisors are required to have good communication skills and receive special training in dealing with customers. They may participate in technical training if they wish. The "advisor" part of their title deals with their relationship with the customer. They do not "advise" or counsel the mechanics on how to diagnose a problem, what cause to eliminate first, or other technical aspects. They are not supervisors or leads for the mechanics; they merely serve as the link between customers and mechanic.

Service advisors are paid a guaranteed salary of \$1400 per month, and receive commissions on the parts and labor they sell. They are also eligible for bonuses. Service advisors earn about \$36,000 to

\$40,000 per year. Service advisors wear white shirts, dark pants, and gray blazers supplied by the Employer, and in hot weather wear blue polo shirts with the Employer's logo. Service advisors do not pay any part of the cost of laundering their outfits.

Two of the current three service advisors were previously employed as auto techs at other dealerships, and both have records of having taken some technical classes, although the record does not establish whether such classes were taken while they were employed as service advisors. The third service advisor has also taken some technical classes. The evidence in the record does not establish that any technical training possessed by any of the service advisors is as extensive as that possessed by the auto techs, or that such technical training is required for the service advisors to be hired or perform their jobs. Service advisors do not perform any vehicle repair work.

Petitioner contends that the auto techs are a "craft" entitled to separate representation.

In *Burns and Roe Services Corporation*, 313 NLRB 1307 (1994), the Board described a craft unit as:

"...one consisting of a distinct and homogeneous group of skilled journeymen craftsmen, who, together with helpers or apprentices, are primarily engaged in the performance of tasks which are not performed by other employees and which require the use of substantial craft skills and specialized tools and equipment. In determining whether a petitioned-for group of employees constitutes a separate craft unit, the Board looks at whether the petitioned-for employees participate in a formal training or apprenticeship program; whether the work is functionally integrated with the work of the excluded employees; whether the duties of the petitioned-for employees overlap with the duties of the excluded employees; whether the employer assigns work according to need rather than on craft or jurisdictional lines; and whether the petitioned-for employees share common interests with other employees, including wages, benefits, and cross-training. [Citations omitted.]

In *Dodge City Of Wauwatosa*, 282 NLRB 459 (1986), the Board found that employer's mechanics to be a craft unit, noting that they were

a distinct and homogeneous group of highly trained and skilled craftsmen who are primarily engaged in the performance of tasks that are not only different from the work performed by the other service department employees, but that require the use of substantial specific craft skills, as well as specialized tools and equipment. In addition, they all have had either extensive training or experience before being hired by the Employer, who thereafter requires them to attend periodic training on a regular basis, and they share a community of interest apart from the other employees of the Employer's service department.

In *Fletcher Jones Chevrolet*, 300 NLRB 875 (1990), the Board found the employer's service technicians to be a craft unit, where they formed a homogeneous group, had little in common with other service department employees, possessed skills that the other service employees either did not have or did not use to repair automobiles, supplied their own tools, were compensated at a rate different from other employees, performed job duties that were distinct from those of the other employees, and had limited contact with other service department employees. The Board noted that the service advisors had "some mechanical knowledge", but that they did not "perform mechanical repairs". The Board did not include the service advisors or any other service department personnel who did not perform actual mechanical work,

but did include lesser skilled personnel who performed relatively simple mechanical tasks, such as oil changes.

The instant case differs from both *Dodge City* and *Fletcher Jones* in that in those cases the employers were contending that only an over-all service department unit, including parts and body shop employees, was an appropriate unit, whereas here the Employer agrees that some service department employees, i.e., parts, lube, and body shop employees, should be excluded from the Unit.

The auto techs herein are similar to those found to be craft employees in the *Dodge City* and *Fletcher Jones* cases. Although this record does not fully establish the degree of training and experience the Employer's auto techs possess, they clearly receive specialized training provided by the Employer. They need prior experience, or training, to qualify for hire. The service advisors do not perform any of the work of the auto techs, and while they may possess the same (in a few instances) or similar skills, they are not required to use those skills in the performance of *their* jobs. They do not perform any mechanical repairs; they have no tools to purchase, since they use no more than a screwdriver, for example, to attach a license plate holder. Further, the service advisors are paid on a different basis than are the auto techs. The asset students are the equivalent of apprentices, which the Board typically includes in craft units. *Burns & Roe*, supra. Moreover, no labor organization is seeking to represent service advisors in a unit including auto techs and asset students, while Petitioner *is* seeking to represent asset students in the Unit along with auto techs.³

I conclude, therefore, that the auto techs and the asset students constitute a separate craft unit that does not include the service advisors, and that such Unit is appropriate for collective bargaining.

There are approximately 15 employees in the Unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, DISTRICT LODGE 24, AFL-CIO.

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board

³ It is standard Board law that a petitioner gets its choice of unit, so long as the sought unit is *an* appropriate unit; it need not be the "optimum" unit, only "appropriate".

at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Officer-in-Charge for Subregion 36 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Subregional Office, 601 SW Second Avenue, Suite 1910, Portland, Oregon 97204, on or before August 1st, 2001. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (503) 326-5387. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by August 8th, 2001.

DATED at Seattle, Washington this 25th day of July, 2001.

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